

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

**RODNEY DAVIS v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Hamilton County**  
**No. 271820     Barry Steelman, Judge**

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**No. E2009-01212-CCA-R3-PC - Filed November 30, 2009**

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The petitioner, Rodney Davis, filed in the Hamilton County Criminal Court a petition for post-conviction relief, alleging that his trial counsel was ineffective, that his pleas were not knowingly and voluntarily entered, and that he was actually innocent of the crimes to which he pled guilty. The post-conviction court summarily dismissed the petition as being time-barred, and the petitioner appeals. The State filed a motion requesting that this court affirm the post-conviction court's dismissal pursuant to Rule 20, Rules of the Court of Criminal Appeals. After review, we conclude that the petition was properly dismissed. Accordingly, the State's motion is granted and the judgment of the post-conviction court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed**  
**Pursuant to Rule 20, Rules of the Court of Criminal Appeals.**

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Rodney Davis, Pine Knot, Kentucky, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Matthew Bryant Haskell, Assistant Attorney General, for the appellee, State of Tennessee.

**MEMORANDUM OPINION**

On April 27, 2009, the petitioner filed a petition for post-conviction relief.<sup>1</sup> In the petition, the petitioner stated that on February 20, 1992, he pled guilty in the Hamilton County Criminal Court in case number 186661 to possession of cocaine over twenty-seven grams and that he received a sentence of eight years which was suspended to intensive probation. Additionally, the petitioner said that on the same date he also pled guilty in case number 189263 to the sale and delivery of cocaine, receiving a four-year suspended sentence. The sentences were to be served consecutively

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<sup>1</sup> The petition was styled as a petition for post-conviction relief or, alternatively, as a petition for error coram nobis relief. On appeal, the petitioner argues only that he is entitled to post-conviction relief.

for a total effective sentence of twelve years. The petitioner stated that he served his sentences in full.

The petitioner asserted that he was currently serving a federal life sentence and that the 1992 drug convictions had been used to enhance his federal sentence. The petitioner sought to have his 1992 drug convictions vacated so he could seek a reduction in his federal sentence. The petitioner acknowledged that his post-conviction petition was untimely, but he contended that the post-conviction court should “exercise discretion to excuse late filing [because] ‘extraordinary circumstances’ exist to justify tolling of the limitations period.” The petitioner claimed that the extraordinary circumstances consisted of his “actual innocence” and the use of the convictions to enhance his federal sentence to life imprisonment.

The post-conviction court dismissed the petition as untimely, finding:

At the time of his pleas, the petitioner was, presumably, aware of all the facts underlying the charges and pleas, including the innocence he now asserts. Even if he did not discover the possible effect of his pleas on any future sentence until after the expiration of the limitation period, the circumstance does not constitute a ground for post-conviction relief. . . . Thus, there is no more or less ground for post-conviction relief than there was at the commencement of the limitation period, when the petitioner had a reasonable opportunity to present his claims.

On appeal, the petitioner challenges the post-conviction court’s dismissal.

Initially, we note that Tennessee Code Annotated section 40-30-102(a) provides that a petition for post-conviction relief must be filed within one year of the date on which the judgment became final or consideration of the petition will be time-barred. The statute emphasizes that “[t]ime is of the essence of the right to file a petition for post-conviction relief or motion to reopen established by this chapter, and the one-year limitations period is an element of the right to file [such an] action and is a condition upon its exercise.” Tenn. Code Ann. § 40-30-102(a).

The petitioner concedes that he pled guilty in 1992 and that “[t]here is no dispute that [he] filed the post-conviction more than 17 years after the criminal judgment[s] became final.” As the petitioner acknowledges, the post-conviction petition was clearly filed well outside the one-year statute of limitations. Pursuant to Tennessee Code Annotated section 40-30-102(b), a court does not have jurisdiction to consider a petition for post-conviction relief if it was filed outside the one-year statute of limitations unless (1) “[t]he claim in the petition is based upon a final ruling of an appellate court establishing a constitutional right that was not recognized as existing at the time of trial, if retrospective application of that right is required”; (2) “[t]he claim in the petition is based upon new scientific evidence establishing that such petitioner is actually innocent of the offense or offenses for which the petitioner was convicted”; or (3) the claim in the petition “seeks relief from a sentence that was enhanced because of a previous conviction and such conviction in the case in which the claim

is asserted was not a guilty plea with an agreed sentence, and the previous conviction has subsequently been held to be invalid . . . .” Tenn. Code Ann. § 40-30-102(b)(1)-(3). In his post-conviction petition, the petitioner contended that his trial counsel was ineffective, that his pleas were not knowingly and voluntarily entered, and that he is innocent of the charges to which he pled guilty. We note that although the petitioner claims actual innocence, he does not make the claim based upon any new scientific evidence. See Tenn. Code Ann. § 40-30-102(b)(2). Therefore, the petitioner’s contentions do not meet any of the aforementioned exceptions to the post-conviction statute of limitations.

Accordingly, we conclude that the trial court did not err in dismissing the petitioner’s petition for post-conviction relief. Thus, the State’s motion is granted. The judgment of the post-conviction court is affirmed pursuant to Rule 20, Rules of the Court of Criminal Appeals.

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NORMA McGEE OGLE, JUDGE